The
RPORATION JOURNAL

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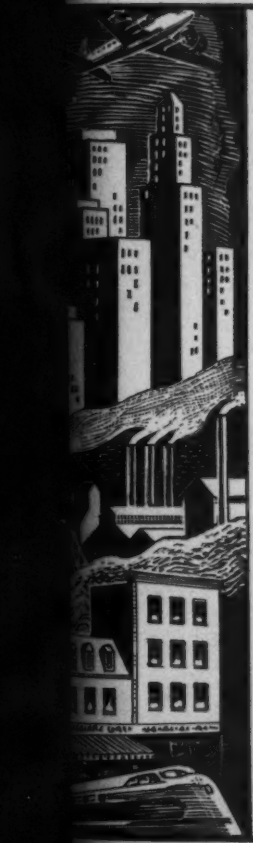

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Tax stamps; survivor;
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Joint Tenant inscriptions;
Debit-credit conflictions.

Control accounts; minors;
Estates; waivers; signers.

Affidavit of loss; guarantee;
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Receiver; agent; disability;
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Awful **poetry—but perhaps it should be. It shows you some of the awfully technical problems which can arise in connection with stock transfers—an awfully good reason for delegating your stock transfer work to CT and its 60-plus years of experience.**

The
CORPORATION JOURNAL

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OCTOBER—NOVEMBER 1956

Contents

Recent Decisions

WHEN,

Mr. Corporation Official,

did you last have your company's out-of-state selling, distributing and operating methods reviewed by your company's lawyer?

A number of states are now engaged in full-scale investigations of the activities being carried on within their borders by non-taxpaying corporations. They have found many corporations to be carrying on *intra*state business. Result: Company required to qualify as a foreign corporation. Back taxes had to be paid, sometimes with interest and penalties.

For the most part, these findings come as a shock to the company's officers. When the company first began operations in outside states the operations had been carefully checked by counsel, set up so all business was done in *inter*state commerce. On review, though, they find seemingly small, seemingly inconsequential changes were made. To meet the pressure of competition company sales representatives added servicing to their duties. A small reserve supply of the company's product was stored in a warehouse so deliveries could be speeded up. Contracts were entered into within instead of outside the state. But no one thought to check the changes first with the company's lawyer—the only one completely equipped by training and experience to check the legal aspects of the changes. Result: Trouble.

Avoid it. Talk your company's operations over with counsel at regular intervals.

P.S. If you want to know more about how states locate "suspects" for their investigations, read "Corporate Tightrope Walking." Copies are available, without charge or obligation, at any C T office.

doing business in new states

Atlantic Seaboard States—Qualification Annual State Taxes

FROM TIME TO TIME, counsel is concerned with the situation of a corporation which is considering moving its home office and plant to a state in the Atlantic coastal group, in which the company is to qualify. Where it is feasible to consider more than one state before reaching a decision, the impact of the *annual taxes* imposed by the eligible states is one of the important factors to be weighed.

This discussion, limited to a consideration of annual state taxes of a foreign corporation, outlines generally the probable incidence of annual taxes upon such a foreign company, with specific reference to income taxes, franchise taxes, sales taxes, chain store taxes and property taxes. Usually, of course, many factors other than tax considerations also enter into the final selection of a state for the re-location and qualification of a corporation, such as proximity to markets, labor, available sites and the provisions of local laws.

Connecticut's income (franchise) tax rate is comparatively low. Its real and tangible personal property tax rates are relatively low. The state does not impose a property tax on intangibles. The retail sales and use tax rate will be 3% from October 1, 1956, through June 30, 1957, and 2% thereafter.

Delaware has no corporate income tax. It imposes no franchise tax on foreign corporations. Its real property tax rates are low throughout the state and it imposes no property taxes upon tangible or intangible personal property of business corporations. While there is no retail sales tax, there are state license taxes which apply to local merchants and manufacturers.

Florida has no income tax and no franchise tax. The rate applied to real property and tangible personal property is moderate and the rates applicable to intangibles, which are separately classified for property tax purposes, are low. The filing fee related to the annual report, referred to at times as a "capital stock tax" and as a "franchise tax", is not high and is subject to apportionment within and without the state. A 3% retail sales and use tax is imposed and a state tax is in effect with respect to chain stores operated in the state.

Georgia's income tax rate is 4%. It also imposes a moderate franchise or license tax. The ad valorem tax rates applicable to real property and tangible personal property are moderate and the rates applying to intangibles having a Georgia situs, which are separately classified for property tax purposes, are low. A 3% retail sales and use tax is levied.

Maine has no income tax and it imposes no tax upon foreign corporations in the nature of a franchise tax, other than an annual $10 license fee. Its property tax rates are moderate. A 2% retail sales and use tax is imposed.

Maryland's income tax rate is 5%. Its property tax rates, imposed upon real estate and tangible personal property, are comparatively moderate, while

practically all intangibles are exempt. There is no francise tax imposed upon foreign corporations. A 2% retail sales and use tax is levied, and there is a license tax on the operation of stores in the state, in addition to a trader's license.

In *Massachusetts,* although tangible and intangible personal property of qualified foreign corporations is not taxable, real property tax rates are comparatively high in many instances and the franchise (excise) tax consists of a combined income tax (5½%) and a corporate excess tax ($5 per $1,000), plus certain surtaxes.

New Hampshire imposes an annual maintenance fee of $35 upon foreign corporations and there is an anuual report filing fee of $15. No franchise, income or retail sales tax is levied, and property tax rates may be regarded as moderate in most areas.

New Jersey has a moderate franchise tax, but imposes no income or retail sales tax and levies no tax on intangible personal property. The rates applying to real property and tangible personal property are comparatively high in some of the larger communities.

In *New York,* the rate of the franchise tax upon business corporations based upon apportioned net income is 5½%. While personal property, both tangible and intangible, is exempt, real property tax rates range from moderate to high. New York City imposes a gross receipts tax and a 3% retail sales and compensating use tax.

North Carolina's income tax rate is 6%. In addition, there is a moderate franchise tax. Property tax rates on real estate and tangible personal property are relatively low, as are the rates on intangible personal property, which is classified and taxed by the state. A chain store tax is levied and there is a 3% retail sales and use tax.

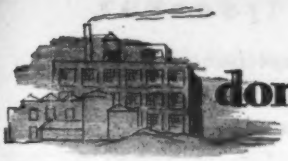
In *Pennsylvania,* tangible and intangible personal property of qualified foreign corporations is not taxed. However, while real property taxes may be said to be moderate, the income tax rate is 6%, and there is also a franchise tax payable by foreign corporations. A 3% selective sales and use tax is imposed.

The *Rhode Island* income tax rate is 5%. Intangible property of corporations subject to the income tax is exempt from property taxes. The rates applying to real property and tangible personal property are relatively low. A retail sales and use tax of 2% is levied.

South Carolina's corporate income tax rate is 5%. The rate applied to real property and tangible personal property is relatively low. A retail sales and use tax of 3% is levied. A moderate annual license tax is imposed.

In *Vermont,* a 5% income or franchise tax is imposed upon net income apportioned to the state, the minimum tax being $25. Property taxes are moderate.

In *Virginia,* the income tax rate is 5%. This state imposes no foreign corporation franchise tax. There is an annual registration fee with a maximum of $25. Real property, tangible personal property and classified intangible property tax rates are comparatively low. While neither sales, use or chain store taxes are levied, license taxes are imposed on retail merchants, wholesale merchants and distributors.



domestic corporations

DELAWARE

"Complete list of stockholders entitled to vote" at election, mentioned in Sec. 219, G. C. L., held not required to include stockholders' addresses or number of shares held.

In an action for a statutory review of election of directors and officers of defendant corporation, the basic issue concerned whether or not there was compliance with section 219 of the Delaware Corporation Law. This section contains a provision that "the officer who has charge of the stock ledger of a corporation shall prepare and make, at least ten days before every election of directors, a complete list of the stockholders entitled to vote at said election, arranged in alphabetical order." Plaintiff urged that such a "complete list" implied more than a mere alphabetical list of names and also called for the stockholders' addresses and the shares held by them.

The Court of Chancery, New Castle County, traced the history of this section and noted that the New Jersey statute, after which it was patterned, specifically required that such a list disclose the number of shares held by each stockholder, together with his residence. The court found it significant that the Delaware legislature, in its original enactment and in a later reenactment, had excluded language found in the New Jersey statute calling for the additional share and residence data. It concluded that Section 219 "requires a statutory preparation and display of a complete list of stockholders entitled to vote, arranged alphabetically and that such list also be available for inspection by stockholders at elections. It does not require disclosure of stockholders' addresses and the number of shares held by them."

The court, in passing, made the following reference to Section 220 of the Delaware Corporation Law: "Section 220 of Title 8, Del. C. on the other hand clearly provides that, 'The original or duplicate stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by 219 * * * or to vote in person or by proxy at any such election', and it is this 'list' which a stockholder may inspect only as a result of an order in mandamus when leave to inspect is refused."

Magill v. North American Refractories Company et al., Court of Chancery, New Castle County, July 19, 1956. Aaron Finger of Richards, Layton & Finger of Wilmington, for plantiff. William Prickett and William Prickett, Jr., of Wilmington, for defendants. (*An appeal has been taken in this case.*)

Stockholder ruled entitled to inspection of corporate books and records where demand is made and proper purpose is revealed.

A stockholder and former director, by a proceeding in mandamus in the Superior Court, sought an order granting inspection of his corporation's books and records. He had written the corporation, outlining his reasons for desiring to examine, or have examined, the books and records of the company. The corporation wrote the stockholder that he or his agents might examine the books of the company during the business hours of the company, stating them, at its office in Williston, North Dakota, "provided that the purpose of the investigation is proper."

The Supreme Court of Delaware, affirming a judgment of the Superior Court granting the writ, observed that the corporation's letter was "not an unqualified consent to inspection. Not only is a proviso appended to the supposed permission, but there was added a denial that plaintiff had disclosed the purpose of his investigation. Defendant's letter, at best, is ambiguous, and plaintiff was entitled to construe it as a refusual, as he did."

Nodana Petroleum Corporation v. State of Delaware ex rel. Brennan, 123 A. 2d 243. Henry R. Horsey of Berl, Potter & Anderson of Wilmington, and Frank F. Jestrab of Williston, N. D., for appellant. Andrew B. Kirkpatrick, Jr., Morris, Steel, Nichols & Arsht of Wilmington, for appellee.

Court limits elements of value to be used, upon appraisal of stock of holders dissenting to merger, to asset and earnings values.

In an action involving a request for an appraisal of their shares by stockholders dissenting to a merger of their corporation with another, the report of the appraiser showed he had employed the following percentages as the weight to be given to the following value elements: assets, 40%; earnings, 25%; sales, 25%; market value, 10%.

The Court of Chancery, New Castle County, reviewing the report of the appraiser, concluded that market value should not have been given independent weight because the evidence showed that there was not dependable market value at or about the effective date of the merger. The court also sustained an exception to the appraiser's use of "sales value" as an independent element of value, regarding it as "but another and even more theoretical method of determining earnings value," and as duplicating that element in these proceedings without purpose. The court reached the conclusion that only two elements of value were entitled to independent weight under the circumstances before it—asset value and earnings value, and that, because of the special circumstances present, the assest value should be weighted at 40% and earnings at 60%.

Sporborg et al. v. City Specialty, Inc., 123 A. 2d 121. Frank O'Donnell of Berl, Potter & Anderson of Wilmington, and William D. Sporborg, Jr., of Port Chester, N. Y., for plaintiffs, except Daniel P. Shepard and Mary L. D. Shepard. George T. Coulson of Morris, Steel, Nichols & Arsht of Wilmington, for defendant.

Proxy provisions of pooling agreement regarded as irrevocable, where coupled with an interest.

In *Abercrombie et al. v. Davies et al.* decided by the Court of Chancery, New Castle County, April 30, 1956, 123 A. 2d 893, 900, (The Corporation Journal, August—September, 1956, page 244), it was held that, although an agreement between the majority stockholders and a majority of directors, whereby the latter were to act as the majority stockholders' agents and function as a unit, had been previously held invalid as an unlawful attempt by certain stockholders to encroach upon the statutory powers and duties imposed on directors by the Delaware Corporation law, (The Corporation Journal, April—May, 1956, page 204), the agreement's severable provisions as to stockholders might be enforced.

Subsequently, the Court of Chancery has had occasion to consider whether the agreement, as delimited by the earlier opinions, could be regarded as invalid because it was a voting trust which failed to comply with the Delaware voting trust statute or whether, alternatively, the agreement could not be sustained either as a pooling agreement or an irrevocable proxy. After an examination of the provisions of the agreement, the court concluded that the agreement was not, and was not intended to be an agreement of the type covered by the Delaware voting trust statute, and that it was not, therefore, invalid for failure to comply with the Delaware voting trust statute. The court also concluded that the agreement was a valid pooling agreement which was not rendered illegal because the voting was done by agents or because, in the case of disagreement, the agents voted on the basis of the decision of seven agents or an arbitrator. Proxy provisions of the agreement were ruled to be irrevocable, being coupled with an interest of those signing the agreement.

Abercrombie et al. v. Davies et al., 123 A. 2d 903. John J. Morris, Jr., of Morris, James, Hitchens and Williams of Wilmington and Joseph W. Moore, of Fouts, Amerman & Moore of Houston, Texas for plaintiff, James S. Abercrombie. Robert H. Richards, Jr., and Stephen E. Hamilton, Jr., of Richards, Layton and Finger of Wilmington for plaintiffs, Phillips Petroleum Company and Sunray Oil Corporation. Richard F. Corroon and Anderson of Wilmington and Francis M. David F. Anderson of Berl, Potter and Shea and Warner W. Gardner of Shea, Greenman, Gardner and McConnaughey of Washington, D. C. for defendants, Signal Oil and Gas Company, The Hancock Oil Company, Lario Oil and Gas Company, Ralph K. Davies, The Globe Oil and Refining Company, Samuel B. Mosher, Garth L. Young, John W. Hancock, Harold A. Black, Francis L. Jehle, and J. Howard Marshall. William Duffy, Jr., of Wilmington for defendant, American Independent Oil Company. Defendants Ashland Oil and Refining Company, Deep Rock Oil Corporation, Rexford Blazer, Sandford M. Burnam and Security First National Bank of Los Angeles, California failed to appear.

State Supreme Court affirms judgment denying injunction to prevent sale of corporate assets, where plaintiff failed to sustain burden of proving proposed sale was in violation of fiduciary duty of directors and majority of stockholders.

In *Baron v. Pressed Metals of America, Inc.*, 117 A. 2d 357, reargument denied, 118 A. 2d 360, (The Corporation Journal, December 1955—January 1956, page 167), the Court of Chancery, New Castle County, ruled that a stockholder, seeking an injunction to prevent the sale of corporate assets, has the burden of proving the sale is in violation of the fiduciary duty of directors and majority stockholders, and, concluding that the plaintiff had not sustained this burden, gave judgment for the corporate defendant.

Upon appeal, the Supreme Court of Delaware has affirmed the judgment of the Court of Chancery.

Baron v. Pressed Metals of America, Inc. et al., 123 A 2d 848. William E. Taylor, Jr., of Wilmington, and Nathan B. Kogan of New York City, for appellant. Fowler Hamilton and Cleary, Gottlieb, Friendly & Hamilton, of New York City, and John P. Sinclair and Berl, Potter & Anderson of Wilmington, for appellees.

foreign corporations

ARKANSAS

Unlicensed foreign corporation denied right to maintain suit in federal court under Arkansas statute requiring the corporation to be qualified.

The appellant, an Indiana corporation, brought an action against the appellee, an Arkansas corporation, in the federal court in Arkansas, to recover damages for breach of contract. The trial court, on motion of the appellee, dismissed the action upon the grounds that the contract was one which had been made in Arkansas; that the appellant had not qualified as a foreign corporation in Arkansas; and that under Arkansas statutes it was without the right or capacity to sue upon such a contract in the state. An appeal was taken to the United States Court of Appeals, Eighth Circuit.

That court found, at the outset, that "the contract was in legal concept and for legal purposes one that had been made in the State of Arkansas." The appellant maintained that it was not doing business in Arkansas within the meaning of the statute, and that, therefore, it was not obligated to qualify. The court noted that under the terms of the contract substantial performance on the part of the appellant was to take place in Arkansas.

The appellant's president was stationed for one year in the appellee's factory in Arkansas where contracted items were to be manufactured, a mailing address was established there for general purposes, a bank account was opened, orders were placed and the scheduling of production was arranged immediately at the appellee's plant, and, in general, the appellant became involved in the operations concerning future orders, dealer relationships, correspondence, etc., in Arkansas.

The court found that the appellant was doing business in Arkansas and that "from the nature, scope, continuity and consequence of the things done" practically maintained a subsidiary or branch office in Arkansas. The judgment of the trial court was affirmed.

Hicks Body Co. v. Ward Body Works, Inc.,* 233 F. 2d 481. Wendell J. Brown of Chicago, Ill., (Edward L. Wright, of Little Rock, Ark., Russell I. Richardson, Stewart & Richardson, of Lebanon, Ind., MacLeish, Spray, Price & Underwood, of Chicago, Ill., and Wright, Harrison, Lindsey & Upton of Little Rock, Ark., with him on brief), for appellant. J. G. Williamson & J. W. Barron (Rose, Meek, House, Barron & Nash, of Little Rock, Ark., with him on brief), for appellee.

*The full text of this opinion is printed in the **State Tax Reporter**, Arkansas, page 351.

CALIFORNIA

Unlicensed foreign corporation, selling to retailers through sole resident distributor, ruled not subject to service of process.

Service of process was effected upon defendant unlicensed foreign corporation by serving the Secretary of State under Sections 6501 and 6502 of the Corporations Code. The trial court had found generally that the corporation was doing intrastate business, that its place of business in California was in San Francisco, and that it sold all of its product in the state through a resident individual maintaining an office in San Francisco, who was the corporation's sole distributor in California. That court also found that all goods manufactured by the corporation arrived in the hands of retailers in California through this distributor.

The District Court of Appeal, Fourth District, reversing a judgment of the Superior Court denying the corporation a writ of prohibition restraining the trial court from proceeding against the company in the suit, concluded that the burden of proof had not been met by the respondents who were the plaintiffs in the trial court, and that the facts were not sufficient to make the corporation amenable to process in the courts of the state.

Smith & Wesson, Inc. v. Municipal Court et al., 289 P. 2d 26. Forgy, Reinhaus, Miller & Kogler of Santa Ana, for appellant. R. M. Crookshank of Santa Ana, for respondents.

QUIZ FO

PA E

(Part 2 wi t iss

A. Who are the statutory agents for your client in outside states?

B. Who is recipient of official communications in states where the corporation must maintain a registered office?

C. Are addresses of agents and offices now on file with state officials correct?

D. Are statutory agents *always* available to receive service of process?

E. Who covers and what happens in case of illness, leave of absence, vacation?

F. Does the corporation have employees in the state—thus making it susceptible to garnishment proceedings?

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issue)

G. Would presently designated recipient of process know what to do with different types? Would he understand short return date actions? Would he recognize importance of process, not let it be side-tracked by pressing problems connected with his primary job as sales manager or engineer or production supervisor, etc.?

H. If suit was started, would you get notice? Immediately? Directly—or through second or third or fourth party?

I. Would process be handled precisely as you wish it to be handled?

J. Wouldn't your client be safer, wouldn't you be surer with the C T System of Corporate Protection—especially when changing over to C T can be accomplished so easily, so quickly?

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ewriter or adding machine is—for doing a job more efficiently, more lawyers and corporation officials. It doesn't cost. It saves. It is not an to do business in outside states safe...easy...and sure—for very little.

DISTRICT OF COLUMBIA

Foreign corporation ruled subject to service of process where it maintained an authorized representative in jurisdiction with power to solicit, negotiate and contract.

The plaintiffs had sued the defendant New Jersey corporation by serving an individual as agent of the company. No answer or appearence was filed and the plaintiffs were granted a judgment by default. A few days later the defendant moved to set aside the default and to quash the service of process on the contention that the defendant was not doing business in the District of Columbia and that the individual served was not a person on whom process against the defendant could properly be served. The trial court ruled in favor of the defendant on both contentions. The plaintiffs then appealed to the Municipal Court of Appeals for the District of Columbia.

The court noted that the defendant had an authorized representative who was given power not only to solicit, but to negotiate and contract with business men in the District and that it had supplied him with its printed form of contract and authorized him to sign as distributor. It had also authorized him to accept payment and to issue its form of official receipt. In addition, in a letter accepting the plaintiffs' contract, the defendant said that its "location supervisor" would contact them and followed this with another letter identifying its supervisor as the person served. The court ruled that the defendant was within the jurisdiction of the court. The motion to quash the service was overruled and it was agreed by counsel that the default should be set aside and that the defendant be permitted to have a trial on the merits.

Weinstein et al. v. Ajax Distributing Company, 116 A. 2d 580. James T. Barbour, Jr. of Washington, D. C., for appellants. Evelyn N. Cooper of Washington, D. C., for appellee.

MAINE

Unlicensed foreign newspaper corporation, owning no property and conducting no business activities in state and employing only a circulation roadman, held not subject to service of process on such employee.

In an action for libel, service of process against the defendant was made upon an individual as "general agent and person for service in the State of Maine." The facts disclosed that the defendant, a Massachusetts corporation not licensed to do business in Maine, was engaged in the business of publishing two newspapers in Boston, but maintained no publishing activities in Maine. The defendant had no office or place of business in Maine, it had no bank account there, its name was not listed in any Maine telephone directory, no records as to circulation or otherwise were kept in Maine and it maintained no property in the state other than a single automobile. The corporation conducted no news-gathering activities within Maine. Newspapers circulated in the state were sold either by subscriptions received

through the mail or by independant dealers whose orders were also received by mail subject to acceptance in Boston. The person served, the United States District Court, District of Maine, Southern Division, found, was employed as a "circulation roadman" whose activities consisted principally in acting as a liaison man between the Boston office of the defendant and Maine dealers with no power to use discretion or to make decisions even in matters of complaints.

A review of related decisions led the court to the opinion that the defendant was not doing business in Maine and, therefore, was not subject to service of process within the state. Moreover, the court ruled that even if the defendant were doing business in Maine, it was not properly served within the meaning of the statute.

*Brewster v. Boston Herald-Traveler Corporation,** 141 F. Supp. 760. Philip F. Chapman, Jr. of Portland, Me., for plaintiff. Leonard A. Pierce of Portland, Me. and Jerome E. Andrews, Jr. of Boston, for defendant.

*The full text of this opinion is printed in the **State Tax Reporter,** Maine, page 10,017.

taxation

GUAM

Federal income tax sustained as a territorial income tax applicable to Guam.

"The basic question for decision in this case," observed the United States Court of Appeals, Ninth Circuit, in a suit involving an appeal from the District Court of Guam, Territory of Guam, "is whether the Organic Act of Guam imposes a territorial income tax and, if so, whether the appellees as officials of Guam are authorized to enforce it." The court ruled in the affirmative, holding that Section 31 of the Organic Act of Guam, 48 U. S. C. A., Section 1421i, which provides that "the income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam," created a separate territorial income tax, that the Government of Guam is authorized to collect the taxes and that the officials collecting the taxes have statutory authority to do so.

*Wilson et al. v. Kennedy et al.,** 232 F. 2d 153. Finton J. Phelan, Jr., and E. R. Crain of Agana, Guam, for appellants. Howard D. Porter, Attorney General, Louis A. Otto, Jr., Deputy Attorney General, Leon D. Flores, Island Attorney, Territory of Guam, of Agana, Guam, for appellee.

*The full text of this opinion is printed in the **CCH Standard Federal Tax Reporter,** page 55, 214.

MICHIGAN

Michigan receipts factor in apportionment formula applied with respect to franchise tax imposed on foreign pipe line corporation, doing both interstate and intrastate business, held required to be limited to intrastate receipts.

Plaintiff foreign corporation was engaged in the distribution of natural gas. A small portion was produced in Michigan. Most of the gas distributed in Michigan came from Texas and other southern states. The trial court had found that 94.0718% of plaintiff's sales of gas in Michigan were sales in interstate commerce through interstate pipe lines. It ordered the Commission to exclude from the computation of plaintiff's franchise tax any and all receipts derived from the interstate sale in Michigan of natural gas transported by it in interstate commerce through its pipe lines from points outside Michigan. The Commission, in determining the tax, had included 50% of plaintiff's interstate receipts in the statutory formula. The Michigan Supreme Court concluded that the formula so used included receipts from a business not related to plaintiff's intrastate business and was arbitrary and imposed an unjust burden upon interstate commerce. The judgment of the trial court in directing the exclusion in the Michigan receipts factor of receipts derived from the interstate sale in Michigan of natural gas transported by plaintiff in interstate commerce through its pipe lines from points outside Michigan, was affirmed.

*Panhandle Eastern Pipe Line Co. v. Michigan Corporation and Securities Commission et al.,** Michigan Supreme Court, June 4, 1956. Paul F. Mickey, William C. Hill, George B. Micklum III, Steptoe & Johnson, H. I. Armstrong, Jr., Bodman, Longley, Armstrong, Bogle & Dahling, and Russell Voertman, for plaintiff. Thomas M. Kavanagh, Attorney General, Edmund E. Shepherd, Solicitor General, and T. Carl Holbrook and William D. Dexter, Assistants Atty. General. (*For appeal, see page 278.*)

*The full text of this opinion is printed in the **State Tax Reporter,** Michigan, page 10,400.

OHIO

Sales tax held applicable to purchase of fuel oil in Ohio by marine contractor, who consumed it in local operations in Ohio and on Lake Erie which were not regarded as involving transportation in interstate or foreign commerce.

The appellant Ohio corporation was engaged in the work of marine contracting performed on the Great Lakes and navigable tributaries thereof, and mostly on Lake Erie within the State of Ohio. The diesel oil for its power equipment was purchased from an oil company in Cleveland and delivered to the appellant in Cleveland. The Tax Commissioner levied a sales tax assessment on all purchases of fuel oil. The Board of Tax Appeals affirmed the order of the Commissioner, whereupon an appeal was taken to the Supreme Court of Ohio.

The court noted that the question presented for consideration was whether the sales in question were sales of fuel

oil for "vessels used or to be used principally in interstate or foreign commerce" within the meaning of subdivision (B) (18) of Section 5739.02 Revised Code. In affirming the decision that the sales were subject to taxation, the court said that "the fuel oil purchased was consumed in Ohio and on Lake Erie adjacent thereto and was not obtained or used for transportation in interstate or foreign commerce. Although the work done by appellant may *facilitate* interstate commerce and affect it incidentally, it is distinct from *transportation* in interstate commerce and is clearly intrastate in character. There is no constitutional inhibition against the imposition of a state sales tax on such local transactions."

L. A. Wells Construction Co. v. Bowers, 130 N. E. 2d 803. Squire, Sanders & Dempsey and George Farr of Cleveland, for appellant. C. William O'Neill, Attorney General, and Larry H. Snyder of Lakewood, for appellee.

PENNSYLVANIA

State Supreme Court holds Corporation Income Tax Act of 1951 inapplicable to foreign corporation having no property, office or place of business in state and engaged only in interstate commerce.

In *Commonwealth of Pennsylvania v. Eastman Kodak Company*, 67 Dauphin 288, (The Corporation Journal, April—May 1955, page 94), the Court of Common Pleas, Dauphin County, ruled that the Corporation Income Tax Act of 1951 was not applicable to a foreign corporation engaged only in furthering interstate commerce in the Commonwealth. In a subsequent opinion rendered by the same court on December 27, 1955, (The Corporation Journal, April—May, 1956, page 215), the court pointed out that it had not previously invalidated the statute but held that the act was inapplicable to the defendant corporation under the facts involved because under those facts the tax settled against the corporation burdened the interstate commerce in which the defendant was engaged. From the judgment in favor of the defendant, the Commonwealth appealed to the Supreme Court of Pennsylvania, Middle District.

Reviewing the facts, the higher court noted that the defendant, a New Jersey corporation, had no tangible or intangible property in Pennsylvania, except 10 salesmen's automobiles, had no office or place of business in the Commonwealth and that it made no contracts there. The Court observed that all the factors in the case of *Roy Stone Transfer Corporation v. Messner et al.*, 377 Pa. 234, 103 A. 2d 700, (The Corporation Journal, June—July, 1954, page 352), wherein it held that the 1951 Act was not applicable to a foreign trucking company engaged in Pennsylvania exclusively in interstate commerce, were present in the instant case, except that the defendant owned 10 automobiles in Pennsylvania and that several of its representatives demonstrated to dealers and others the proper method of using its products. The court did not consider those additional factors sufficient to constitute local activities within the meaning of the decided cases.

The State Supreme Court, affirming the county court decision, held that "the Corporation Income Tax Law of 1951 in its application to this defendant is in violation of the Interstate Commerce Clause and therefore unconstitutional."

Commonwealth of Pennsylvania v. Eastman Kodak Company, 124 A. 2d 100. Edward Friedman, Deputy Attorney General, and Herbert B. Cohen, Attorney General, for appellant. Sanford D. Beecher and Duane, Morris & Heckscher of Philadelphia, for appellee.

UTAH

Foreign corporations, maintaining chief places of business and generally conducting finance business in Utah held doing business and subject to franchise tax.

The plaintiffs, a Nevada and an Idaho corporation not qualified to do business in Utah, were in the business of purchasing conditional sales contracts from the sellers of house trailers in Nevada and Idaho and collecting the principal and interest due on such contracts. The State Tax Commission determined that the plaintiffs were doing business in Utah within the meaning of Sections 59-13-1(5) and 59-13-3, Utah Code Annotated, 1953, and assessed corporation franchise tax deficiencies for the years 1951 and 1952. The plaintiffs appealed to the Supreme Court of Utah.

The court noted that the following activities of the corporation were carried on in Utah: (1) The officers, directors and manager of both corporations were residents of Utah; (2) Although some directors' meetings had been held in Las Vegas, Nevada, gradually all such meetings were held in Utah; (3) The corporations discounted contracts in Utah and negotiated loans in Utah; (4) Books and records were kept in the state; (5) The corporations had legal counsel and auditors in Utah; (6) Neither corporation maintained offices or employees outside Utah, nor did either corporation own property situated outside the state; (7) Correspondence aimed at securing payments on the contracts went out from the Utah office.

The court was of the opinion that the plaintiffs, during the period in question, were doing business in Utah and were subject to the franchise tax. The plaintiffs may not avoid their tax obligations, the court added, by violating the state's statute as to qualifying to do business. The decision of the State Tax Commission was affirmed.

*Nevada Trailer Finance Co., Inc., et al. v. State Tax Commission,** 229 P. 2d 126. White, Arnovitz & Smith of Salt Lake City, for appellant. E. R. Callister, Jr., Ben Rawlings, Rex W. Hardy, John G. Marshall of Salt Lake City, for appellee.

*The full text of this opinion is printed in the **State Tax Reporter**, Utah, page 1366.

WASHINGTON

Business and occupation tax ruled applicable to corporation which furthered interstate commerce, but which also maintained local division sales office, with numerous salesmen, and carried on other activities locally.

Plaintiff Delaware corporation sought to recover sums paid, under protest, as business and occupation taxes. The taxpayer published two sets of books. All stocks, except display and sample sets, were maintained outside the state of Washington. Shipment, pursuant to order or contract, was made directly therefrom to the customer, f. o. b. the point of shipment. All payments, except the

initial payment, were made by the purchaser directly to the taxpayer's Chicago office.

The trial court had held the imposition of the tax violated the interstate commerce clause of the Federal Constitution, entering judgment against the defendant, which appealed to the Washington Supreme Court. That court reversed the judgment of the lower court, laying emphasis upon the taxpayer's maintenance of division offices, including such offices in Seattle, Washington. The Seattle division was divided into eight separate districts, three of which were located in Washington. The Seattle division office consisted of a suite used by its division manager, the Seattle district manager, and four employees doing bookkeeping and stenographic work. New solicitors' instruction classes and salesmens' promotional meetings were conducted there. Approximately four hundred and ten salesmen worked under the supervision of the Seattle office. The higher court indicated that, under such circumstances, the business and occupation tax did not effect an unconstitutional levy upon interstate commerce.

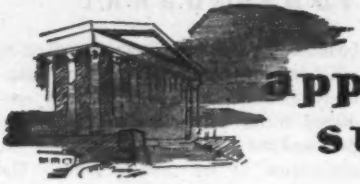
Field Enterprises, Inc. v. Washington, 289 P. 2d 1010. Don Eastvold, Attorney General, Keith Grim, Assistant Attorney General, of Olympia, for appellant. Evans, McLaren, Lane, Powell & Beeks and Martin P. Detels, Jr., of Seattle, for respondent. (*Appeal filed in the Supreme Court of the United States, June 28, 1956; Docket No. 214.*)

state legislation

Massachusetts — Chapter 550, Laws of 1956, has effected changes in the due dates for the filing of Excise Tax Returns for fiscal years ending on and after January 31, 1957. Such returns will be required on or before the 15th day of the third month following the close of the taxable year. However, April 10, 1957, continues as the due date for returns and payments related to fiscal years ending January 31, 1956, and for the intervening fiscal years to and including December 31, 1956.

Mississippi — Senate Bill 1716 provides that when stockholders of a corporation desire to surrender its charter, a meeting may be called by publication of notice in a newspaper and the mailing of the notice to stockholders or by notice of a special meeting as provided in the by-laws.

South Carolina — Public Act 1148 provides that corporations controlled by aliens may not own or control more than 500,000 acres of land within the limits of the State of South Carolina.



appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

ARKANSAS Docket No. 51. *Leslie Miller, Inc. et al. v. The State of Arkansas,* 281 S. W. 2d 946. (The Corporation Journal, February—March, 1956, page 192.) Contractors' state license—government contracts—federal areas. **Appeal filed, March 23, 1956. Probable jurisdiction noted and case transferred to summary calendar, May 28, 1956.**

CALIFORNIA. Docket No. 99. *Pacific Western Oil Corporation v. Franchise Tax Board,* 289 P. 2d 287. (The Corporation Journal, August—September, 1956, page 255.) Income tax—income from intangible assets—commercial domicile in California. **Appeal filed, May 21, 1956.**

MICHIGAN. Docket No. 354. *Panhandle Eastern Pipe Line Co. v. Michigan Corporation and Securities Commission et al.,* decided June 4, 1956. (The Corporation Journal, October—November, 1956, page 274.) Franchise tax—apportionment formula—basis. *Petition for writ of certiorari filed, August 29, 1956*

MISSISSIPPI. Docket No. 226. *McWilliams Dredging Company v. McKeigney,* 86 So. 2d 672. (The Corporation Journal, August—September, 1956, page 256.) Income tax—specific accounting. **Appeal filed, July 2, 1956.**

WASHINGTON. Docket No. 214. *Field Enterprises, Inc. v. Washington,* 289 P. 2d 1010. (The Corporation Journal, October—November, 1956, page 276.) Business and occupation tax—interstate commerce. **Appeal filed, June 28, 1956.**

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* Data compiled from **CCH U. S. Supreme Court Bulletin, 1956-1957.**

regulations and rulings

Arizona — A domestic corporation which merges with a foreign corporation which is not qualified in Arizona need not file releases from the State Tax Commission. (Opinion of the Attorney General, State Tax Reporter, Arizona, ¶ 4-003.)

General — Where it is desired to effect, before the end of the calendar year, either the withdrawal of a foreign corporation from a state in which it had been authorized to do business or the dissolution of a domestic corporation, counsel have usually found that it is advisable to initiate the dissolution or withdrawal proceedings in most states as early as possible. Thus, if there are time-consuming requirements with which compliance must be had, ample provision may be made to satisfy such requirements before the end of the year. Frequently such requirements call for the preparation of income and other tax reports, the auditing of the corporate books, or the obtaining of certificates from various state departments that all taxes due the state have been paid. Inasmuch as, in some instances, a month or more may be consumed in effecting such compliance, it is advisable to investigate and institute dissolution or withdrawal proceedings, wherever possible, well in advance of the close of the year.

Georgia — The Canadian income tax is a foreign income tax and is allowable as a deduction from income and not as a credit against the tax due Georgia. (I.C.R. No. 17, State Tax Reporter, Georgia, ¶ 200-072.)

North Carolina — A Virginia corporation dealing in carpeting which has no office or permanent salesmen residing in North Carolina, makes no deliveries in the state—delivery being made either by common carrier or by customers bringing the goods into the state by their own methods of transportation—places advertisements in the North Carolina newspapers and mails advertising literature to residents, and employs other firms to install its product there when sold, is required to collect the use tax on sales to residents of North Carolina. (Opinion of the Attorney General to Commissioner of Revenue, State Tax Reporter, North Carolina, ¶ 200-128.)

South Carolina — A foreign corporation which wishes to lend money on real estate mortgages in the state must file three statements with the Secretary of State and pay a fee of $50. The corporation need not comply fully with the domestication laws. (Opinion of the Attorney General, State Tax Reporter, South Carolina, ¶ 200-030.)

Texas — Where a corporation had no gross receipts from business done in the state during the first year following the granting of the charter or permit, the franchise taxes of the corporation for the initial tax year, for the additional period, if any, between January 1 and May 1 following the end of the first year, and for the year beginning May 1 following the end of the first year is to be computed on the basis of the assessed value, for county ad valorem purposes, of the property held or owned by it in the state as of the date of January 1 which falls within the first tax year. (Opinion of the Attorney General, State Tax Reporter, Texas, ¶ 200-169.)

some important matters

For October and November

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama — Quarterly Withholding Tax due on or before October 31.

Arizona — Quarterly Withholding Tax due on or before October 31.

California — Quarterly Retail Sales Tax due on or before October 31.

Colorado — Quarterly Withholding Tax due on or before October 31.

Connecticut — Quarterly Retail Sales Tax due on or before October 31.

Delaware — Withholding at source Returns due October 31.—Domestic and Foreign Corporations paying compensation to Delaware employees.

Georgia — Certified Statement for Registration due on or before November 1.

Indiana — Quarterly Gross Income Tax due on or before October 31.

Iowa — Quarterly Retail Sales Tax due on or before October 31.

Kentucky — Quarterly Wthholding Tax due on or before October 31.

Maryland — Quarterly Withholding Tax due on or before October 31.

Missouri — Quarterly Retail Sales Tax due on or before October 15.

New York — Second Instalment of Franchise (Income) Tax of Business Corporations due on or before December 1.—Domestic and Foreign Business Corporations other than real estate companies.

North Dakota — Quarterly Retail Sales Tax due on or before October 31.

Oregon — Quarterly Withholding Tax due on or before October 31.

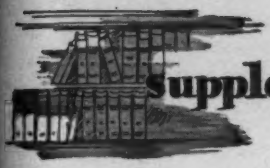
Rhode Island — Semi-Annual Report to Division of Industrial Inspection during October and April.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

South Dakota — Quarterly Retail Sales Tax due on or before October 15.

Utah — Quarterly Retail Sales Tax due on or before October 30.

Vermont — Quarterly Withholding Tax due on or before October 31.

West Virginia — Quarterly Business (Gross Sales) Tax due on or before October 30.



supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

What Constitutes Doing Business (1956 Edition). A 182-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Spot Stocks Mean More Sales. A review of the advantages *and* dangers of using spot stocks at strategic shipping centers to bolster and increase sales.

Corporate Tightrope Walking. Of interest to counsel for and the officers of any corporation carrying on business in interstate commerce.

Agent for Process. Case histories of corporation officials who suddenly found out that trouble can take funny bounces when statutory representation is entrusted to a business employee.

Before and After Qualification. A complete list of aids and services—including those supplied without charge—which CT furnishes for lawyers working on foreign corporation matters.

Corporate Confusion. A discussion of the wriggling, twisting, seemingly opposite court decisions which make building a pattern for out-of-state operations by a corporation a risky business these days.

A Pretty Penny . . . Gone! What it can cost a corporation—as shown by actual court cases—if its agent cannot be found when service of process is attempted.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

Some Contracts Have False Teeth. Interesting case-histories showing advisability of getting lawyer's advice before contracting for work outside home state, even for federal government.

When a Corporation Is P. W. O. L. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

THE CORPORATION TRUST COMPANY
120 Broadway, New York 5, N. Y.

Form 3547 requested

The CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company bi-monthly, February, April, June, August, October and December. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

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